

**CONGRESSMAN BOB MICHEL
INTELLIGENCE COMMITTEE REMARKS/HR 1013
APRIL 1, 1987**

Mr. Chairman, I thank you for this opportunity to appear before the House Permanent Select Committee on Intelligence. For 7 years I have been an Ex-Officio member of the Committee. During that time I have had the chance to see at first hand the professionalism of the staff and the dedication of the members. I want to take this opportunity to pay public tribute to the fine work you have done and continue to do.

I appear before you today to discuss some aspects of the Bill H.R. 1013, introduced by the Chairman, which would amend the National Security Act of 1947 and Section 662 of the Foreign Assistance Act of 1961 -- the Hughes-Ryan amendment.

Let me quote from the Chairman's own remarks when he introduced the Bill on February 4th of this year:

"With these amendments, the scheme for covert action reporting will be quite clear. First, in almost all cases, prior notice must be given to the intelligence committees; second, in rare cases, where the President believes there is an unusual degree of sensitivity, prior notice must be given, but it may be given to the leadership group set out in section 501; and third, in even rarer cases, where the President must react with speed because of an immediate threat to our national security, notice may be deferred for a maximum of 48 hours."

I am not a constitutional scholar. But I have been a member of the Congress for over 30 years. I have seen the Legislative Branch and the Executive Branch come to loggerheads on constitutional prerogatives over and over again. But nowhere has the issue been more forcefully joined than in the language of the amendment I have just read. And nowhere has the issue been more serious. What we are dealing with here is a fundamental question of foreign policy.

If I may judge from the remarks made by the Chairman during that same floor speech in February, his amendment has its origins in the controversy surrounding the Iran-Contra arms affair and the notification issue.

I will not comment on the facts of Iran-Contra affair because we already have 2 Congressional committees working full time to uncover those facts. And while I have read with interest varying interpretations of the President's decision not to notify Congress, my appearance here today is not concerned with the legal and historical questions of that issue.

I would rather talk about the future than the past, about the dangers I see to our nation if the Chairman's amendment ever becomes law. Legislation proposed in the heat of political passions, with long-range questions of national security overshadowed by short-term responses to current controversies, is not Congress acting at its best.

I fully understand the motivation that led to this proposed legislation. I understand the frustration that supporters of the legislation might feel given their perception of the events surrounding the Iran-Contra affair.

But a sense of frustration, justified or unjustified, is not a sufficient cause to create legislation like this.

In dealing with intelligence oversight, the Congress has never intended to confront an American president with language that is the functional equivalent of a foreign policy strait-jacket.

There is an old rule of thumb about problem-solving. It says that we should never try to seek more accuracy in our answers than the facts of the question permit.

In short, we should never sacrifice the good to the best. We should never try to find a perfect formula for states of affairs that do not, by their very nature, allow perfection.

James Madison, in Federalist Paper No. 48, described the possibility of the legislative branch encroaching on the legitimate functions of the other branches. Speaking of the legislative branch, he wrote:

"Its constitutional powers being at once more extensive and less susceptible of precise limits, it can with the greater facility, mask under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments."

To put the matter in the less eloquent, but perhaps more emphatic language of our own time, Congress can pass legislation whose stated aim is doing good for all concerned, but whose effect will be encroachment on the rights of the other branches of government.

The Constitution of the United States made it clear from the beginning that there could be no clear-cut, easy-answer, ready-made formulation to do away with the inherent tension between 2 branches of government, each with legitimate powers.

They knew that sometimes we would have to live in that gray, fog-shrouded area of the political landscape between the Executive and the Legislative powers, where clarity isn't always possible.

If you feel, Mr. Chairman, as you said in your statement, that "...the bond of mutual respect between the committee and the CIA...has been broken...", the worst way to re-establish that old bond of trust is by forging new chains of legislative language.

We should not fool ourselves that we can solve these complex problems simply by writing new language.

I wish it were that simple. But it is not. Under a system

of government like ours, we have to take risks. Democracy itself is a risk. There are no guarantees.

But one risk we cannot take: We cannot risk having our adversaries -- and, indeed, our friends -- perceive an American president as not being able to move quickly and decisively because Congress has restricted his flexibility.

I stress the word "perceive". There are learned counselors and expert witnesses on both sides of this issue. We who are not constitutional lawyers or experts can only listen and try to make judgements.

But whatever the constitutional issues involved, if this legislation became law, the perception of a weakened presidency would be universal. No amount of convoluted arguments about what the legislation means could erase the impression that the Congress intends to limit a president's flexibility. This may not be your intention. But it will be the perception. And in politics -- including geopolitics -- perception is all important.

I can think of no worse scenario than one in which a Soviet leader meets with an American president -- any American president -- believing that our president has been stripped of the freedom to act swiftly and with flexibility.

Again, I don't question the motivation behind this proposal. What I question is the wisdom of Congress, acting in the emotion of this Iran-Contra affair, placing restrictions upon the very institution of the presidency itself, restrictions that are in my view, constitutionally dubious and strategically dangerous.

Let me turn for a moment to another aspect of the issue. It may seem peripheral, but I believe it is important in the over-all context of the debate over Congressional oversight.

There are those who say no administration can afford to trust the Congress with secret information for fear it will be leaked.

The Tower Commission Report addressed this point among its recommendations. What the Report had to say about the problem of possible "leaks" is worth quoting in full:

"There is a natural tension between the desire for secrecy and the need to consult Congress on covert operations. Presidents seem to become increasingly concerned about leaks of classified information as their administrations progress. They blame Congress disproportionately. Various cabinet officials from prior administrations indicated to the Board that they believe Congress bears no more blame than the Executive Branch.

"However, the numbers of Members and staff involved in reviewing covert activities is large; it provides cause for concern and a convenient excuse for presidents to avoid Congressional consultation.

"We recommend that Congress consider replacing the existing

Intelligence Committees of the respective Houses with a new joint committee with a restricted staff to oversee the intelligence community, patterned after the Joint Committee on Atomic Energy that existed until the mid-1970's."

I am glad to see that the Tower Commission did not engage in "Congress-bashing" when it came to discussing leaks of classified information.

But it is worth repeating that the Report did say the "number of Members and staff involved in reviewing covert activities is large; it provides cause for concern..."

I think that it is a very fair and accurate assessment of the situation.

Our distinguished colleague, Mr. Hyde, has proposed legislation that there be one joint Congressional Intelligence Committee, a proposal I support. I think that we should embrace Mr. Hyde's proposal since it reflects the concerns of many, including the members of the Tower Commission.

In conclusion, my view is that intelligence oversight can work -- as it has in the past -- when there is the give and take of debate, the freedom for a president to maneuver, along with the acknowledgement, in deed as well as word, of the legitimate right of Congress to be properly informed in order to perform its oversight functions.

I think the legislation we already have on the books reflects a wise, prudent compromise to a complex problem. The legislation ain't broke. So let's not fix it.

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